

# THE MUSHA' LAND LEGAL FRAMEWORK:

## OVERVIEW AND PERSPECTIVES

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## INTRODUCTION

Public spaces are land plots mostly owned by the state or municipalities. When such land plots are allocated towards the use of the public, they fall under the status of public domain.

The public domain is natural (the shore of the sea to the highest winter flow, the beaches of sand or pebble and rivers) or artificial (roads, public squares and gardens, etc.). It is inalienable and imprescriptible.

In Arabic, it is common to designate the public domain as *amlak aamoumiyé*, but it is legally more correct, under the land property law, to speak of land that is *metrouké mehmíé*.

It is easy to recognize the public domain since it is not registered as cadastral parcels. These are not numbered plots, and they are not attached to any real estate records (*ifédé aaqrié*).

But not all public spaces are located on the public domain. Likewise, not every public domain is assigned to the use of the public. Some parts of the public domain may be dedicated to a public service and are therefore closed to the public. Similarly, other parts of the public domain, particularly in coastal zones, may be privately occupied.

In addition, all land belonging to the state or municipalities is not necessarily public domain. Some may be considered private when they are reserved for private use. Others would hold a separate status, the *musha'*, when they are designated with the purpose of collective use.

## 1. THE LAND STATUS OF MUSHA':

*Musha'* land plots are either owned by the state or municipalities, and assigned to the common use of a group of people. However, this right of use is not a "right in rem" (*aainia*). It is simply a plurality of personal rights, collectively granted to members of a community, usually

village inhabitants. The term *musha'* is used in current language, while legally, it is referred to as *métrouké murféké* land.

It therefore leads to some confusion (Kizi, 2002). The term *musha'*, which means "undivided", corresponds to a land status when it is understood in the sense of land that is *métrouké murféké*.

On the other hand, the term *shuyu'a*, which corresponds to "co-ownership", is a right in rem that relates to ordinary private property on *mulk* land. It is typically a case where several members of the same family collectively own the property through inheritance (Article 20 of the land property law). Co-ownership can similarly relate to a right of *tessarouf* when the land is *amirié*.

*Musha'* status should also not be confused with the regime of joint property (*mulkié muchtaraké*) pertaining to Legislative Decree No. 88 of September 16, 1983, which is the system of division inside a building or a group of buildings on the same plot.

The *musha'* land, when understood as *metrouké murféké* land, applies to a special tenure covering large spaces in rural areas, traditionally assigned to agricultural activities.

The organization of these spaces may vary from one *musha'* land to another. The rules are not codified uniformly for the whole territory.

Article 7 of the land property law, with the wording now in force, results from Law No. 47 of June 24 1971, and states that the *métrouké murféké* lands are:

*"Those who, belonging to the state, are subject, in favor of a collectivity, to a right of use whose characteristics and extent are specified by local practices or administrative regulations"* (translation by the author).

The same article adds that these lands are:

*"Considered as private property of municipalities if they are located within their perimeter."*

When *musha'* lands belong to the state, they are managed by a special commission whose members are designated by a promulgated decree proposed by the Minister of Agriculture. If these lands are wooded, the committee's decisions are subject to approval by the *caïmacam* and the Ministry of Agriculture (Clerc-Huybrechts, 2009).

When such lands belong to a municipality, the Municipal Council manages them.

## 2. THE ORIGINS OF THE MUSHA' LAND STATUS:

The origins of the status of these land plots have been the subject of several research works. It was also treated by Camille Duraffourd, Head of the Land Registry Service of the Levant States under the French mandate from

1926 to 1941, in a document entitled "Instruction on the dismemberment of *Musha'* land (collective indivision)" (Duraffourd, 1933, p. 1). He notes that:

*"According to studies and surveys carried out to date and findings from some villages, Musha' land plots were formerly a kind of communal domain whose breakdown was carried out each year between the inhabitants, on the pro-rata of the number of households (...)"* (translation from the author).

He indicates in this regard that when a "male individual" dies or leaves the village, his rights disappear and fall back to the community. Equally, when a "male individual" is born, he is included the following year in land distribution and his share is added to those of other male individuals in the same household.

With regards to the distribution of uses among inhabitants, it appears from this document that for reasons of equity, zones (*maoukas* or *maksam*) were delimited according to the nature of the land. Each household then received a parcel in each of these zones.

The distribution was temporary, and each household could regularly be reassigned to other plots, every three or ten years. Reallocation of parcels was carried out by a random draw.

He also states that this tenure resulted from very old customs, but had never been recognized by the Ottomans, and thus had never previously been subject to special legislation.

This statement, however, is contradicted by another author, who notes that the term *métrouké murféké* appears officially during the land reform of 1858, to designate one of the two categories of *métrouké* land, "left for public use" (Young, 1906).

Article 5 of the previous land property law, dating from 1858, adds that these lands are those "which, like pastures, are put to the general service of the inhabitants of a community" (translation from the author).

Nevertheless, Camille Duraffourd indicates that the Ottoman Government tried to end this practice towards the end of the nineteenth century during the general census of the lands (*yoklama*), at which time individual titles were delivered to co-owners of *musha'* land, in zones occupied respectively by each of them. This measure is substantiated by other authors (Dubar and Nasr, 1976, p. 34) according to whom:

*"In the 1880s, on the occasion of the general census of the properties, the musha' possessions were in principle stabilized and the terroirs divided according to the actual situation of that time; land titles were delivered in which the properties were delineated in feddan or shares of feddan"* (translation from the author).

In spite of this measure, the temporary distribution of *musha'* lands went on and on. This resulted in a great deal of legal uncertainty, since the individual titles that

had been issued no longer corresponded to reality.

The creation of the land registry by decision No. 186 of March 15, 1926, and the consequent land delineation put an end to a certain number of difficulties, although we can still see *musha'* land plots today, in areas that are not covered by cadastral maps.

Camille Duraffourd was clearly not very supportive of the conservation of *musha'* lands. He considered this system as archaic and as allowing for economic and social progress, particularly in terms of agricultural yield. Their status has, however, been recognized by the Land Property law approved by decision No. 3339 of November 30, 1930.

Despite this recognition, he worked to ensure that the *musha'* lands were dismembered so as to constitute parcels under the status of private individual property. The latter was the subject of the abovementioned "Instruction", but also of a notice that was published on an undefined date (Duraffourd, s.a.).

Hence, for example, the large agricultural areas formerly located on the coastal plain of southern Beirut, previously under *musha'*-status, have gradually become mulk-plots (Clerc-Huybrechts, 2009). However, some *musha'* land plots have survived to this day, mostly in rather isolated areas. In the absence of official statistics, it is difficult to determine their exact number or area.

### 3. THE MUSHA' LAND PLOTS TODAY

Most of the remaining *musha'* land plots nowadays are in escheat. This situation can be explained by the decline in agricultural activity, particularly in Mount Lebanon, but also by the fact that a certain number of people registered on the electoral lists of their hometowns, and thus likely to benefit of a right of use, no longer reside there.

When these land plots are not unexploited, they serve more or less informal or even illegal activities, such as landfills or quarries. *Musha'* plots could, however, be a lever for rural development if they were subjected to the right policies.

Indeed, they constitute important land reserves that could be planned for ecotourism projects, whose profitability would benefit their community. The jobs created would also benefit the local population.

#### **Different modes of management could be envisioned:**

- The municipality grants the exploitation of an ecotourism activity to a company within the framework of a public-private partnership, by fixing its conditions and by benefiting from a part of the profits, which would then be reinvested to finance local development projects;

- The villagers themselves, with the agreement of the municipality, form a cooperative association that would exploit an ecotourism activity;

- The municipality itself operates the activity by directly involving the villagers.

In all cases, the municipality would set the contract specifications, stipulating that potential operators are required to take action in favor of ecology, biodiversity or local development (reforestation, trail development, fauna and flora monitoring, experimenting with new farming methods, etc.).

Hence, if well-managed, these lands would constitute one of the last bulwarks against the galloping urbanization of the rural areas, by protecting spaces where nature could prosper again, while promoting economic development and social bonds.

The *musha'* land status could in that sense be usefully linked to the status of "Natural Park".

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